

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 13285 of 2007
with
SPECIAL CIVIL APPLICATION Nos. 13317 to 13342 of 2007
with
SPECIAL CIVIL APPLICATION Nos.13462 to 13465 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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VIVEK K. THAKKAR - Petitioner
Versus
STATE OF GUJARAT & 6 - Respondents

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Appearance :

MR SI NANAVATI, SENIOR ADVOCATE WITH MR SAURIN MEHTA FOR NANAVATI & NANAVATI for Petitioner.

MR UMANG OZA, AGP, for Respondents : 1-2,

MR MITUL K SHELAT for Respondents : 3 & 6,

MR DC DAVE for Respondent : 4

MR BB NAIK for Respondent : 5,

MR PS CHAMPANERI for Respondent : 7.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 22/08/2007

COMMON ORAL JUDGMENT

1. RULE. In light of the view that the Court is adopting learned advocates for respective respondents are directed to waive service, and the petitions are taken up for final hearing and disposal today.

2. Each of the petitioners is a student, who is admitted to M.B.B.S.Course run by respondent No.5-Swami Vivekanand Institute of Medical Science, Valia, District : Bharuch in the year 2002-2003 through Centralized Admission Committee. No renewal of permission was granted for the Academic Year 2003-2004 by the Central Government. Later on, on 20.7.2004, permission for the Academic Year 2004-2005 was granted for an additional intake of 50 students as recommended by respondent No.3-Medical Council of India ["M.C.I." for short]. It is an admitted position that no renewal of permission has since been granted to respondent No.5-Institute for the Academic Years 2005-06, 2006-07 and 2007-08.

3. It appears that, sometime in November, 2005, the

petitioners, under an apprehension, filed a group of petitions being Special Civil Application Nos. 19458 to 19934 of 2005, whereunder a prayer was made to direct the M.C.I. not to withdraw or cancel the recognition as far as the Batch of the present petitioners-students is concerned, and seeking a further direction to consider the petitioners-students at par with all other students, who are studying in the College on the basis of recognition granted by Central Government of India/M.C.I. On 5.10.2005, this Court passed the following order :

"Mr.B.B.Naik, learned Counsel for the respondent-College and Mr.Mitul Shelat for the Medical Counsel of India state that no admission is granted to fresh students for the year 2005-2006 in view of non-renewal of recognition and the academic career of the students who are studying will not be affected. Mr.D.C.Dave, learned Counsel for the respondent University makes a statement that the students, who are studying, will complete their M.B.B.S. Course. Prayer regarding recognition for all purpose and non-renewal of the recognition of the College for the year 2005-2006 is subject to challenging the decision of the Medical

Council of India. This petition cannot be entertained and it is disposed of. Notice is discharged. No order as to costs. Liberty in case of difficulty."

4. The case of the petitioners is that, thereafter the petitioners have successfully cleared examinations conducted by respondent No.4-University after completion of 4 1/2 years of M.B.B.S.Course. That, subsequently, the petitioners moved respondent No.6-Gujarat Medical Council seeking Provisional Registration Certificate, but, in absence of recognition under Section 11 of the Indian Medical Council Act, 1956 ["the Act" for short], the Gujarat Medical Council refused to grant the said Certificate. The petitioners, therefore, moved this Court by way of the present petitions. Subsequently, on 20.06.2007, the following order came to be made by this Court :

"The learned AGP has placed on record Notification dated 19th June, 2007 issued by the Health and Family Welfare Department, Government of Gujarat, whereunder for academic year 2007-2008, the petitioners have been granted relief to the extent of qualification

of South Gujarat University in respect of students being trained at Swami Vivekanand Institute of Medical Sciences and Research, Valia General Hospital, At & Post : Valia, District : Bharuch has been provisionally recognized. In the circumstances, no further orders are required at this stage.

2. In so far as the remaining issues are concerned, the matters are to be listed for hearing on 17th July, 2007."

5. Under Section 11 of the Act, recognition of medical qualifications granted by any University or Medical Institution in India is provided for under the Act, and sub-section (1) of Section 11 of the Act states that only those medical qualifications granted by any University or Medical Institution in India, which are included in the First Schedule, shall be recognised medical qualifications for the purposes of the Act. Sub-section (2) of Section 11 of the Act provides that any University or Medical Institution in India which grants a medical qualification not included in the First Schedule, may apply to the Central Government to have such qualifications recognised, and the Central Government, after

consulting the M.C.I., may, by notification in the Official Gazette, amend the First Schedule so as to include such qualifications therein; and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualifications declaring that it shall be a recognised medical qualification only when granted after a specified date.

6. In light of the aforesaid provisions of the Act, respondent No.4-University and respondent No.7 i.e. Union of India, were called upon to inform the Court the course of action that each one of them proposed to undertake in light of communication dated 3.7.2007 from M.C.I. to the Dean of respondent No.5-Institute. The said communication states that the Registrar of the University shall forward a formal request through the Central Government as required under Section 11(2) of the Act for carrying out inspection of the College at the time of Final M.B.B.S. examination for its approval for awarding M.B.B.S. Degree. A further request is made to send Examination-Schedule of Final M.B.B.S.(Practical

Examination) as and when finalised by the University, well in advance, to enable M.C.I. to arrange inspection at the time of examination.

7. The learned advocate for respondent No.4-University has placed on record communication bearing No. Exam/Medical/7359/2007, dated 13.8.2007, whereunder the Central Government has been informed about the schedule of M.B.B.S.Degree Examinations to be conducted in October, 2007, and the printed schedule, which has been notified by the University on 2nd August, 2007, has been enclosed along with the said communication. However, as the said schedule did not contain dates of practical examinations, learned advocate for respondent No.4-University was called upon to make a statement in this regard, and it is stated by Mr.D.C.Dave, learned advocate, that the practical examinations shall be conducted on and from 26.10.2007 and shall continue upto 7.11.2007 or thereabouts. In light of communication dated 03.07.2007 from M.C.I. addressed to respondent No.5-Institute, the University is directed to forward a formal request to M.C.I. for carrying out inspection

of the College at the time of final M.B.B.S. Examination and for approval to award M.B.B.S. Degree.

8. The learned advocate for the Central Government Mr.Champaneri has made a statement that the Central Government shall complete the requisite formalities within a period of eight weeks from the date of receipt of the relevant request from the University. In light of the aforesaid schedule of the written and practical examinations, which has come on record, the first terminus for commencement of examinations would be 9.10.2007 and the last terminus for completion of the examinations would be 7.11.2007 or thereabouts. In the circumstances, once the inspection is undertaken by M.C.I. during this period, the remaining formalities of issuance of notification, as required by the provisions of Section 11(2) of the Act, can be completed by the Central Government latest by 31st December, 2007. The Central Government and Medical Council of India are accordingly directed to act in conjunction and consultation with each other, and ensure that all the formalities,

including issuance and publication of notification, are completed by 31st December, 2007.

9. In light of the aforesaid directions issued to the University, Central Government and M.C.I., no further directions are required to be made, and the prayer to award Degree can only be fructified upon completion of requisite formalities as directed hereinbefore. Hence, no further orders are required to be made in this connection. The petitions stand allowed accordingly, in the aforesaid terms. Rule made absolute. There shall be no orders as to costs.

10. Before parting, it is necessary to record the positive approach of the learned advocates appearing for respective parties in resolving the issue.

[D.A.MEHTA,J.]

(patel)